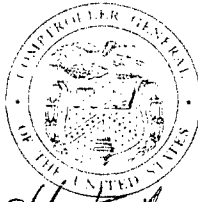


Proc I

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*[Protest Alleging that Agency Could Not Provide Basis For*

FILE: B-193693

DATE: June 11, 1979

MATTER OF: Interstate Commerce Commission--  
Reconsideration

*Specification Requirements]*

DIGEST:

1. Additional information provided by agency with request for reconsideration of decision finding that agency had not provided reasonable support for specification requirements will be considered.
2. GAO will not question agency's determination as to what constitutes its actual minimum needs unless there is clear showing that determination lacks reasonable basis.
3. Although there is statement in bid that bidder has begun expanding its manufacturing capability by opening new production site in Canada, consideration of bid as domestic bid does not appear to have been inappropriate, since bidder certified in bid that each end product would be domestic end product and statement in bid as to bidder's capability does not say that machines to be furnished under solicitation are to be manufactured in Canada.
4. GAO does not review affirmative determination of responsibility absent circumstances not applicable in present case.

The Interstate Commerce Commission (ICC) has requested reconsideration of Lanier Business Products, Inc., B-193693, April 3, 1979, 79-1 CPD 232. In that decision, we sustained the Lanier protest on the basis that the ICC had not submitted any substantiation for the background mode requirement and the subscript and superscript on screen display requirement for the text processing equipment in solicitation No. ICC 79B-0001.

The ICC has now provided information to support the requirements. Lanier contends that the information should not be considered since it was available to the ICC during the pendency of the protest and, therefore,

~~005540~~

does not constitute new evidence. To support its position that the information should not be considered, Lanier cites cases of various Boards of Contract Appeals and Lite Industries, Inc.,--Reconsideration, B-184403, July 29, 1976, 76-2 CPD 91, a decision which held that a protester's request for reconsideration did not present new factual information. However, we have considered additional information provided by an agency upon the request of the agency for reconsideration of a decision finding that the agency had not provided reasonable support for its requirement. The Raymond Corporation; Air Force--requests for reconsideration, B-188277, September 16, 1977, 77-2 CPD 197. And where we have recommended resolicitation, we have invited further justification from the procuring activity. Roy's Rabbitry, B-193628, May 2, 1979. Thus, we will consider the additional justification provided by ICC in this case.

The ICC has indicated that in recent years there has been a need to increase the output of its written communications effectively and efficiently. To achieve this end, the ICC initiated a paperwork management study. The study recommended, among other things, the utilization of text processing equipment.

The ICC has indicated that the requirement for background mode processing was included in the specification for the text processing equipment for the following reasons:

"The capability of duplicating information from one medium to the other in background mode was necessitated by the Commission's heavy paperwork load and minimum response requirements which require document transferring to various centers, regional offices and other users. A background mode will satisfy the Agency's need to provide information material to our other offices in support of its Consumer Program. In addition, such capability strengthens the document transferring process as the workload fluctuates and to Commission facilities outside of its headquarters building. Further, it is imperative that operator time be minimized to the degree which allows them, at all times, full use of their equipment. Moreover, in view

of the fact that all typing services for legal/scientific/professional personnel in the Commission are centralized, with a ratio of 1 operator to every 13 authors, it is an operative, minimum requirement that any duplication process function independently with full use of the system for input/output needs. This function is in support of the Commission's main goal to provide maximum use of equipment and personnel at all times."

Further, the ICC has stated:

"The Commission's workload further necessitates that all text processors be available at all times for general use (i.e., inputting/outputting). Use of this feature insures that the clusters/center are always capable of providing maximum equipment and operator utilization. Use of the background mode for transferring information from one medium to another, or merging of several applications such as mailing notices to carriers, congressional correspondence and publication mailings, frees the operator to input or revise existing work. Without this capability the workflow process would be impacted in a negative fashion. It is estimated that 88 man-hours weekly would be wasted in accomplishing this simple task without the feature."

With respect to the specification requirement that the subscripts and superscripts appear on screen in their respective elevated and/or depressed positions through the use of codes, the ICC has provided the following reasons:

"As a minimum, the Commission has a requirement which supports the need of subscripts and superscripts in the following application areas:

- . Hearing transcripts and supportive documentation
- . Legal decision & briefs
- . Safety & health documents
- . Completion of government preprinted forms
- . Carrier reporting in the form of statistical and narrative reports
- . Lengthy budget submissions to Congress and support documentation
- . Environmental documentation and references to chemicals transported by surface carriers
- . Publications - Legal and administrative

"These applications represent approximately 50 percent of the applications involving legal, environmental and accounting areas of the Commission. It was a minimum requirement that these codes appear on the screen only and act as commands during printing so that the footnotes appear on the printed page in their proper depressed/elevated positions without printed codes, and without a requirement for the operator to manually intervene without printout."

Lanier objects to the ICC justification for the requirements on the grounds that it is unsubstantiated. For example, it objects to the ICC estimate that the absence of the background mode feature would result in a loss of 88 man-hours per week, since the ICC has furnished no evidence to support that conclusion.

Although, as Lanier has pointed out, the ICC has not provided any statistics to show how the 88 man-hours estimate was arrived at, we are unable to conclude from an overall review of the justification for the background mode feature that there is no

reasonable basis for the requirement. Since the apparent purpose in obtaining the text processing equipment was to make the written communication process efficient, we would have to agree with the ICC that equipment which permits two functions to occur at once-- duplication of material in the background mode while different material is being prepared in the foreground mode--would achieve that end. In that regard, we have held that we will not question an agency's determination as to what constitutes its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4.

However, while the ICC justification does support the need for subscript and superscript material being shown "on screen," we find nothing therein that indicates why the "codes" must appear "on screen" as well. In this regard, we note that Lanier has represented that its equipment does print subscripts and superscripts in their respective positions although the equipment does not display them in that manner on the screen.

In the immediate situation, we do not find that the "on screen" requirement was prejudicial to Lanier, since it has indicated that it could not have complied with the background mode feature. However, we suggest that the ICC review the need for the "on screen" requirement before it utilizes it again in any future procurement.

In view of the foregoing, we withdraw the recommendation in the April 3 decision that the solicitation be resolicited.

As a result, it becomes necessary for us to consider Lanier's argument that Micom's bid should have been evaluated as a foreign end item because of the following statement in its bid:

"\* \* \* Micom has begun expanding its manufacturing capability to over 500 machines per month by opening a new production site near its corporate offices in Montreal, Canada."

However, as noted by Lanier, Micom, in the Buy American certificate in the bid, certified that each end product would be a domestic end product. In this regard, our Office has held that where a bidder or offeror excludes no end products from the Buy American certificate in its bid and does not indicate that it is offering anything other than domestic source end products, the acceptance of the offer, if otherwise acceptable, will result in an obligation on the part of the bidder to furnish domestic source end products. Abbott Power Corporation, B-192792, April 30, 1979, 79-1 CPD 295. The statement quoted from Micom's bid does not mean that it was not going to furnish a domestic end product. The statement only speaks of the capability of the company to produce 500 machines a month as the result of the opening of a new factory in Canada. The statement does not say that the machines to be furnished under the immediate solicitation are to be manufactured in Canada. Accordingly, consideration of the Micom bid as a domestic bid does not appear to have been inappropriate.

In the alternative, Lanier contends that Micom should have been found nonresponsible by reason of lack of integrity for misleading the ICC into believing that Micom will be in compliance with the Buy American Act requirements. However, our Office does not review protests involving affirmative determinations of responsibility in the absence of circumstances not applicable here. Ammark Corporation, B-192052, December 21, 1978, 78-2 CPD 428.

By letters of today, the appropriate congressional committees are being advised that this decision eliminates the ICC's obligations under the (Legislative Reorganization Act of 1970, 31 U.S.C. §§ 1171-76 (1976),) referred to in our April 3 decision.

*R. F. K. 11/12*

Deputy Comptroller General  
of the United States